

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-104

July 10, 2001

MAINECOM SERVICES
Proposed Terms and Conditions to
Include Templates for Two Types of
Contracts to Eliminate the Requirement
of Filing for Separate Approval for
Contracts

ORDER APPROVING
TERMS AND CONDITIONS
AND FORM SPECIAL
CONTRACTS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order we approve a change in the terms and conditions as well as a related form special contract for MaineCom.

II. BACKGROUND

On February 8, 2001, MaineCom filed revised Terms and Conditions. MaineCom proposes to add a paragraph 8 to its term and conditions providing that its services (the sale or leasing of "dark fiber") must be provided by contract and that if the terms and conditions of a contract do not materially differ from those contained in either of the two "contract templates," the contract does not need to be filed with or need further approval by the Commission. MaineCom admits that the pricing for its services will vary from one contract to another. It therefore is requesting advance approval of two form contracts whose pricing provisions are blank.

MaineCom requests that we approve the form special contract pursuant to 35-A M.R.S.A. § 703(3-A) and thereby "approve in advance" every contract with a customer that uses the form terms and conditions. It is also requesting us to approve, in advance, future prices for each customer, which are unknown at this time and may vary from customer to customer. MaineCom agrees that the Commission may request it to provide the Commission with any of the contracts at any time and that MaineCom shall comply within 72 hours.

II. DECISION

Advance approval of the form contract does not present a problem. Advance approval of prices, which are presently unknown and will not be the same for each customer, presents a somewhat more difficult legal question. MaineCom states that prices will be subject to negotiation and will reflect market value, the specific circumstances of the customer, and any unique factors related to the provision of service by the customer. MaineCom is a competitive telecommunications provider. We generally refrain from direct regulation of the rates of CLECs, and here the particular

service is competitive. We therefore will approve in advance competitively-based pricing for future individual contracts. We have previously approved a similar request for Oxford County Telephone Service Company d/b/a Oxford Networks in Docket No. 2000-505.

We remind MaineCom that it is a public utility and is subject to the requirement of 35-A M.R.S.A. § 702(1) that it not engage in undue or unreasonable discrimination among customers. As we have explained in previous orders where we have granted utilities flexibility in their pricing under special contracts, a price difference alone does not establish unjust discrimination. A utility may negotiate prices in a competitive market, taking into account the competitive alternatives available to the customer and other customer-specific circumstances.

The proposed Term and Condition states that any contract that does not “materially differ” from the template Customer Services Agreement does not need further approval. That request is acceptable. Upon occasion customers bargain for materially different terms and conditions than those contained in a form contract. To the extent that a contract for an individual customer does differ materially from the form contract that we are approving in this Order, MaineCom must submit that particular contract to the Commission for approval.

Accordingly, we

1. APPROVE replacement page 2.0, Second Revision (containing Section 8) of the terms and conditions of MaineCom, filed on June 18, 2001, and the form special contracts (Exhibits A and B) filed as part of the original filing on February 8, 2001; and,
2. ORDER MaineCom to comply with other directives contained in this Order.

Dated at Augusta, Maine, this 10th day of July, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.